REMARKS

Applicants appreciate the thorough examination of the present application as evidenced by the Office Action mailed April 8, 2008 (hereinafter "Office Action").

Status of the Claims

Claims 18-33 stand rejected under 35 U.S.C. §101 as directed to non-statutory subject matter. Claims 1-2, 4-7, 18-19, 21-23, and 33 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication No. 2004/0220791 to Lamkin et al. ("Lamkin"). Claims 1-2, 4-19, and 21-35 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication No. 2005/0008348 to Collar et al. ("Collar"). Claims 3 and 20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lamkin in view of U.S. Patent No. 5,703,997 to Kitamura et al. ("Kitamura"). Claims 3 and 20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Collar in view of U.S. Kitamura. Claims 1-17 and 34-35 are canceled. Claims 18, 21-23, 27 and 29 are currently amended. Claims 36-46 are new.

Section 101 Rejection

Claims 18-33 stand rejected under 35 U.S.C. §101 as directed to non-statutory subject matter. The Office Action states that claims 18-33 are directed to nonfunctional descriptive material. Applicants hereby amend claims 18-33 to recite "a computer-readable storage medium."

Section 2106.01 of the MPEP states:

> Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." **In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component.** (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th

> ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works, and a compilation or mere arrangement of data.
>
> Both types of "descriptive material" are nonstatutory when claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759. **When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized**. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)(discussing patentable weight of data structure limitations in the context of a statutory claim to a data structure stored on a computer readable medium that increases computer efficiency) and *Warmerdam*, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). (Emphasis added).

According to Section 2106.01 of the MPEP, computer readable program code is considered "functional descriptive material." Moreover, Section 2106.01 of the MPEP goes on to explain that functional descriptive material recorded on a computer readable medium constitutes statutory subject matter. Thus, claims 18 – 33 are directed to a computer readable medium that contains program code, i.e., a first instruction and a second instruction, thereon. Accordingly, Applicants submit that claims 18-33 qualify as statutory subject matter under 35 U.S.C. §101 for at least these reasons.

Section 102 Rejections

Embodiments of the present invention relate to data useful for generating random numbers. An example of such data is DVD data including a video sequence which can be interrupted by a user (by, for example, pressing a button on a remote control), causing the data to skip to another sequence (or to be otherwise discontinued), and also to provide a value which can be used to generate a random number. The value varies according to which point in the sequence the user interrupts the sequence, but the sequence is discontinued in the same way (by e.g. jumping to the same sequence) irrespective of the point in the sequence. The user is thus unaware of which value is generated. The point of interruption of the sequence,

and hence the value generated, is likely to be different each time the sequence is played. Thus, the claimed invention is patentable over the cited art.

Independent claim 18 stands rejected as anticipated by Lamkin, and additionally as anticipated by Collar. Claim 18 recites in part "a command comprising: a first instruction for linking or jumping to a second video sequence; and a second instruction, independent from the first instruction, for deriving a first value wherein the first value varies depending on the command."

Lamkin relates to the storage and arranging of data of different formats, such as DVD data, MP3 audio streams, XHTML pages etc., and using metadata files to enable the different data formats to be played together. This may involve creating a "virtual DVD" (see Figures 12 and 13, and associated passages of the description), in which clips of various formats are assembled and metadata files created, including "behavioral metadata" files. Lamkin's "behavioral metadata" files, inter alia, describe commands for performing navigational functions such as moving to a further sequence, fast forward, rewind etc. Lamkin thus describes conventional DVD navigational commands and the navigational commands associated with the behavioral metadata. In each case, to the extent that the commands are for deriving a value, this is done only for the purposes of performing the navigational function of the command. Therefore, each command does not comprise two different instructions, one for performing a navigational function and another for deriving a value.

Collar relates to DVD content including a random number selection program. A user triggers the selection of a random number by, e.g., pressing a button (see [0043]). This results in the standard random number generator of a DVD playback device being invoked (see [0046]). A navigational command is also executed to select a program chain appropriate to the number thus generated. For example, if the number 4 is generated a program chain may be selected which results in a die rolling a number 4 being shown (see [0052]). Thus, while the DVD data structures of Collar have navigational commands and commands for deriving a value (i.e. commands to invoke a random number generator), these are separate, independent commands, and cannot be said to comprise instructions forming a single command, as recited in claim 18 Further, the value derived from the commands to invoke a

random generator does not vary according to the command invoked—the number derived is generated in exactly the same way for each command. Thus, Collar et al. does not disclose all the recitations of claim 18.

Additionally, new independent claim 42 is not anticipated by Lamkin or Collar. Claim 42 recites:

> An audiovisual product comprising audiovisual data representing audiovisual content, the audiovisual data having a navigational structure and comprising: a sequence of audiovisual data associated with a plurality of commands, wherein invocation of one of the plurality of commands results in navigation to a first location in the navigational structure and derivation of a first value, said first value varying according to which of said plurality of commands is executed, and said first location being the same for each of said plurality of commands.

The navigational commands described in Lamkin only derive values for the purpose of performing navigation. Thus, there is no plurality of commands which result in navigation to the same location, but derive variable values. Lamkin does not mention different commands causing navigation to the same location. However, even if Lamkin discussed any such commands, they would necessarily involve the *same* value being derived in each case, since any values derived by the commands would be used to navigate to the same location.

Furthermore, claim 42 is not anticipated by Collar. As described above with respect to claim 18, the navigational commands and commands for deriving a value of Collar are separate and independent and cannot be considered to comprise single commands for both navigation and deriving a value. Collar does not disclose any description of a plurality of commands for navigating to the same location. Further, even if the two types of command according to Collar were considered together, since the values derived according to the teachings of Collar are used to navigate to an appropriate program chain, any navigational commands that lead to the same location necessarily correspond to the *same* value having been derived. Thus, the value does not depend on the command executed.

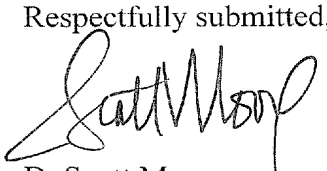
Thus, for at least the reasons set forth above, amended claim 18 and new claim 42 are patentable over Lamkin and over Collar. New independent claim 46 includes the same recitations as claim 18 and is therefore is patentable over Lamkin and over Collar for at least

the reasons discussed above with respect to claim 18. Claims 19-33 and 36-41 depend from claim 18 and are therefore patentable for at least the reasons that claim 18 is patentable. Finally, claims 43-45 depend from claim 42 and are therefore patentable for at least the reasons claim 42 is patentable.

CONCLUSION

In light of the above amendments and remarks, Applicants respectfully submit that the above-entitled application is now in condition for allowance. Favorable reconsideration of this application, as amended, is respectfully requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (919) 854-1400.

Respectfully submitted,



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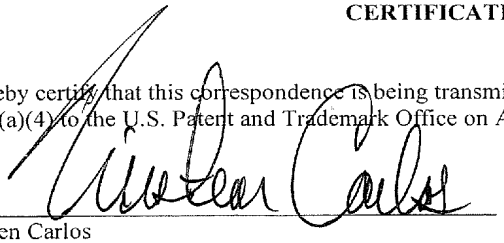

Kirsten Carlos